

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JAN 26 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0149-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
ISAURA CRUZ CHIN,)	Not for Publication
)	Rule 111, Rules of
Petitioner.)	the Supreme Court
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20031901

Honorable Paul E. Tang, Judge

REVIEW GRANTED; RELIEF DENIED

Douglas W. Taylor

Tucson
Attorney for Petitioner

E C K E R S T R O M, Presiding Judge.

¶1 During a nighttime traffic stop in a rural, sparsely populated area, a deputy sheriff smelled the odor of marijuana emanating from a vehicle driven by petitioner Isaura Cruz Chin. A jury found Chin guilty in absentia of transporting for sale sixteen bales of marijuana weighing over 271 pounds. For this class two felony, the trial court sentenced her to a substantially mitigated, three-year prison term, and we affirmed the conviction and

sentence on appeal. *State v. Chin*, No. 2 CA-CR 2004-0197 (memorandum decision filed May 19, 2005).

¶2 Chin then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., alleging ineffective assistance by trial counsel. The present petition for review follows the trial court's denial of relief without an evidentiary hearing. We will not disturb the trial court's ruling unless it has plainly abused its discretion. *State v. Morgan*, 204 Ariz. 166, ¶ 25, 61 P.3d 460, 467 (App. 2002). We find no such abuse.

¶3 On appeal, Chin had contended the arresting deputy had lacked a reasonable basis for stopping her vehicle initially. We ruled Chin had forfeited the right to challenge the lawfulness of the stop because her counsel had neither moved to suppress the evidence nor objected when the evidence was offered at trial. Concluding the trial court had no obligation to inquire into the legality of the traffic stop *sua sponte*, we affirmed. In her petition for post-conviction relief, Chin maintained trial counsel's omissions constituted ineffective assistance.

¶4 To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). A colorable claim for post-conviction relief is "one that, if the allegations are true, might have changed the outcome." *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993).

¶5 The trial court denied relief after thoroughly analyzing both components of the *Strickland* test for ineffective assistance and concluding Chin’s allegations satisfied neither. As the trial court explained in its written ruling, it found Chin had failed to meet her burden to show affirmatively that trial counsel, in not moving to suppress evidence of the marijuana or objecting to admission of the evidence at trial, had departed from the prevailing standard of care. More importantly, the court ruled Chin had not been prejudiced as the result of counsel’s omissions. It concluded the deputy’s inability to see a license plate on Chin’s vehicle had justified his stopping the vehicle to investigate. Because it found the initial stop lawful, the trial court ruled there was no reasonable probability it would have granted a motion to suppress, had one been filed, nor sustained an objection to admission of the evidence acquired during the stop, had such an objection been interposed at trial.

¶6 We are satisfied that, in its detailed minute entry explaining its reasons for denying relief, the trial court has clearly identified, thoroughly discussed, and correctly resolved the ultimate issue presented. We therefore need not revisit its analysis. *See State v. Whipple*, 177 Ariz. 272, 866 P.2d 1358 (1993). Although we grant the petition for review, we find no abuse of the trial court’s discretion and thus deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

PHILIP G. ESPINOSA, Judge